

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

**JESSE LANE DABBS v. JACK MORGAN, WARDEN and the
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Morgan County
No. 9174 E. Eugene Eblen, Judge**

No. E2006-00623-CCA-R3-HC - Filed February 1, 2007

The petitioner, Jesse Lane Dabbs, appeals from the order denying his petition for writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the state's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Joe H. Walker and Walter B. Johnson, II, Office of the Public Defender for the Ninth Judicial District, for the appellant, Jesse Lane Dabbs.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; J. Scott McCluen, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In June 1990, the petitioner was indicted on six counts of aggravated rape, two counts of aggravated kidnapping, and one count of attempted aggravated kidnapping. On June 6, 1991, the petitioner entered best interest guilty pleas to five counts of aggravated rape and one count of attempted kidnapping. The remaining counts of the indictments were dismissed pursuant to the plea agreement. The petitioner was sentenced to twenty years each for three of the aggravated rape convictions, five years for the attempted kidnapping conviction, and twenty two and one-half years for each of the two remaining aggravated rape convictions. The twenty two and one-half year sentences were ordered to be served concurrently with each other, but consecutively with the remaining sentences, for an effective sentence of eighty-seven and one-half years in prison. On direct appeal, the petitioner challenged the trial court's imposition of consecutive sentences as excessive and asserted enhancement factors were improperly applied. This court affirmed the trial

court's judgment. See State v. Jess L. Dabbs, No. 01C01-9308-CR-00253 (Tenn. Crim. App. Sept. 15, 1994), app. denied (Tenn. Jan. 30, 1995). In May 2005, the petitioner filed for post-conviction relief and his petition was dismissed as time-barred. On appeal, this court upheld the judgment. See Jesse Lane Dobbs v. State, No. M2005-01727-CCA-R3-PC (Tenn. Crim. App. June 9, 2006), app. denied (Tenn. Nov. 6, 2006).

On May 27, 2005, the petitioner filed a pro se petition for writ of habeas corpus, his second.¹ The petitioner essentially challenged the trial court's imposition of consecutive sentencing as well as the application of enhancement factors. The trial court appointed counsel to the petitioner and heard the matter on July 26, 2006. Following the hearing, the trial court found that the state's motion to dismiss was well-taken and denied the petition. The petitioner timely appeals.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); T.C.A. § 29-21-101. The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). A petition seeking issuance of a writ of habeas corpus may be summarily dismissed by a trial court if it fails to indicate that the petitioner's conviction is void. T.C.A. § 29-21-109.

In this case, the petitioner does not allege that his effective sentence of more than eighty-seven years has expired. The petitioner's claim is that his sentences were rendered illegal and void by the trial court's failure to articulate sufficiently findings of fact to support the imposition of consecutive sentences and the application of enhancements factors. See T.C.A. §§ 40-35-115; 40-35-210. More specifically, while he conceded in his petition that “the trial court did cite to the enhancement and consecutive sentencing factors under the statutes,” the petitioner contended that “there was NO ARTICULATION of how such factors had been evaluated and balanced in determining the sentence” This court concludes that the petitioner's argument is not cognizable in a habeas corpus action. Moreover, we have noted that this court rejected the petitioner's sentencing challenge on direct appeal and affirmed the judgment of the trial court. Based on our review of the underlying record, this court agreed with the trial court that the petitioner qualified as a “dangerous offender” and approved consecutive sentencing. See State v. Jesse L.

¹The trial court summarily dismissed the petitioner's first habeas petition that challenged the legality of his indictments. This court affirmed the judgment on direct appeal. See Jesse L. Dabbs v. State, No. 03C01-9806-CR-00199 (Tenn. Crim. App. Aug. 16, 1999).

Dabbs, No. 01C01-9308-CR-00253, slip op. at 8. Further, despite noting that the trial court made no comparative analysis in assessing some twenty and some twenty-two and one-half year sentences for the aggravated rape convictions, this court observed that enhancement factors existed for each of the crimes and concluded that “the trial court, in our view, properly enhanced each of the sentences above the fifteen year minimum within the range” Id., slip op. at 11. “It is fundamental that habeas corpus and post-conviction proceedings may not be employed to raise and relitigate or review questions decided and disposed of in a direct appeal from a conviction.” Ray v. State, 489 S.W. 2d 849, 851 (Tenn. Crim. App. 1972). To the extent that the petitioner now seeks instead to challenge the *manner* of the imposition of sentence as opposed to the sentence itself, the claim is not cognizable because, if proven, it would at best render the judgment voidable rather than void. Lastly, it does not appear that the petition may have been instead properly construed as one for post-conviction relief because it was filed well beyond the applicable statute of limitations. See T.C.A. § 40-30-102(a). In summary, the trial court properly rejected the petitioner’s claim of a void sentencing judgment and denied habeas corpus relief.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established a cognizable claim for habeas corpus relief. Accordingly, the state’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

JOSEPH M. TIPTON, PRESIDING JUDGE